Le Marquis Hotel, LLC *and* Local 758, Hotel and Allied Services Union, SEIU, AFL–CIO and District 6, International Union of Industrial Service, Transport and Health Employees, Party-in-Interest. Case 2–CA–34440.

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On January 22, 2003, Administrative Law Judge Steven Fish issued the attached decision. The Respondent filed exceptions and a supporting brief.[1] The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Le Marquis Hotel, LLC, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. September 30, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS

Allen M. Rose, Esq. & Leah Z. Jaffe, Esq., for the General Counsel.

Gregory R. Begg, Esq. (Peckar & Abramson), of River Edge, New Jersey, for the Respondent.

Kent Y. Hirozawa, Esq. (Gladstein, Reif & Meginness, LLP), of New York, New York, for the Charging Party.

Johnathon Walters, Esq. (Markowitz & Richman), of Philadelphia, Pennsylvania, for Party-In-Interest.

DECISION

STATEMENT OF THE CASE

STEVEN FISH, Administrative Law Judge. Pursuant to charges filed by Local 758, Hotel and Allied Services Union, SEIU, AFL–CIO (Local 758 or the Union), the Director for Region 2 issued a complaint and notice of hearing on May 9, 2002,[1] alleging that Le Marquis Hotel, LLC (Respondent) violated Section 8(a)(1), (2), and (3) of the Act by recognizing and signing a contract containing a union security clause, with District 6, International Union of Industrial Service, Transport and Health Employees, herein called District 6, even though District 6 did not represent a majority of employees in the unit.

The trial with respect to the complaint allegation, was held before me in New York, New York, on August 15 and 16, 2002. Briefs have been filed by all parties and have been carefully considered. Based upon the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Respondent is a corporation with an office and place of business at 12 East 31st Street, New York, New York, where it is engaged in the business of operating a hotel.

Annually, Respondent derives gross revenues in excess of $500,000 and purchases and receives at its New York, New York facility, goods and supplies valued in excess of $5000 directly from points located outside the State of New York.

It is admitted, and I so find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted and I so find that Local 758 and District 6 are labor organizations within the meaning of Section 2(5) of the Act.

[1] The Respondent excepts only to the judge's application of the Board's dual card doctrine, which it contends is no longer valid precedent, in finding that the Respondent violated the Act.

[2] Member Liebman has already expressed her view that the dual card rule should be abandoned on the ground that an employee, by signing authorization cards for each of two rival unions, indicates a willingness (absent an explicit revocation of one card by the other) to be represented by either union, and that both cards should therefore be counted toward, respectively, a majority showing of support for each union. See *Alliant Foodservice*, 335 NLRB 695, 698–699 (2001) (Member Liebman dissenting). In this case, the cards signed for the Charging Party explicitly revoked the cards previously signed for the union the Respondent recognized, and the judge correctly found that a majority showing was not made.

[1] All dates herein are in 2002, unless otherwise indicated.

II. FACTS

A. The Recognition of District 6

Respondent is a hotel located at 12 East 31st, New York, New York. District 6's office is located next door to the hotel at 18 East 31st Street.

During January and February, a number of employees of Respondent executed authorization cards on behalf of District 6. Subsequently, Respondent and District 6 agreed on a card count, which was conducted on February 15, by Arbitrator Roger E. Maher.

On that date, Arbitrator Maher reviewed 24 authorization cards submitted by District 6, and verified the authenticity of 17 of these cards, by comparing signatures to 28 signed W-4 forms, which is the number of Respondent's employees in the bargaining unit which the parties agreed upon.[2]

The arbitrator certified that 17 cards[3] out of a unit of 28 employees, represented a majority of employees in the unit. Based on that determination, Respondent recognized District 6 as the collective-bargaining representative of Respondent's employees in the unit. On February 19, the parties executed a collective-bargaining agreement, running from February 19, 2002 through February 18, 2005. Although the contract contained a union-security clause, the parties stipulated that no dues were deducted pursuant to the union-security clause in the agreement.

B. Local 758's Organizational Campaign

Local 758 began organizing Respondent's employees in early February. Between February 4 and 14, Local 758 obtained a number of authorization cards from employees, including nine cards from employees who also signed cards for District 6, which were part of the 17 cards examined and authenticated by the arbitrator at the card count.

The Local 758 authorization cards which were obtained from Respondent's employees reads as follows

APPLICATION FOR MEMBERSHIP
SERVICE EMPLOYEES INTERNATIONAL UNION

Local Union No. 758

> I hereby request and accept membership in the *SEIU* Union, Local 758, AFL–CIO, and authorize said union to represent me and, in my behalf, to negotiate and conclude any and all agreements as to wages, hours and other conditions of employment. This full power and authority to act for the undersigned supersedes and cancels any power and authority heretofore given to any person or organization to represent me. I agree to be bound by the Constitution and Bylaws, and the rules and regulation of the International and the Local, and by any contracts that may be in existence at the time of this application or that may be negotiated by the Union.

However, the cards as printed, contained blanks after Local Union No. ____, and again in the main paragraph between the and Union and after the word Local. Thus, where underlining appears in the above language, the cards contains blanks to be filled in by handwriting. On the bottom of the card on the same side, there is a space for date and signature. On the other side of the card, there are printed spaces for name, residence, phone number, social security number, date of birth, occupation, and "employed by."

Neil Diaz, an organizer for Local 758 solicited all of the cards executed on behalf of Local 758. Sometime prior to February 1, the Union received a phone call from employee William Campo concerning organizing by the Union. On February 1, Diaz met with Campo and introduced himself as a representative from Local 758, and indicated that Campo had called the Union. Campo informed Diaz at that time that another Union (District 6) was coming around, but that the employees want Local 758 only. Campo and Diaz discussed the organizing process, and Diaz informed Campo that the Union would need to obtain signed authorization cards from employees, and that the Union "might probably get an election in the future." Diaz also discussed the benefits that employees would get if the Union wins the election. Diaz added that if after the Union wins the election, it will negotiate a contract with Respondent and these benefits will be part of the benefits that the employees will receive. However, Diaz did not give Campo any cards on February 1.

On February 4, Diaz approached Campo outside the hotel, and informed him that it was time to start signing cards. Diaz asked Campo if he had signed a card for District 6. Campo replied that he had signed a card for that Union, but the employees didn't want District 6. Diaz informed Campo that Local 758 needed to get a majority of employees to sign Local 758 cards. Diaz gave Campo a card to sign himself, as well as 10 other cards to distribute to other employees. Campo said, "yes," and proceeded to read and fill out the card. He returned the card to Diaz, but the card was not signed on the back.

Later on that same morning, Campo informed employee Miguel Velez, that Diaz, a representative from Local 758, which is the real Union for hotels was around and would be distributing cards for Local 758. Campo told Velez to sign a card for Local 758, because it was a better union, it was a hotel union, and the employees would get more benefits with a hotel union. Velez told Campo that he had already signed a card for District 6, thinking that it was Local 6 of the Hotel Union. Campo informed Velez that District 6 is not a hotel union. Velez answered that he would sign a card for Local 758.

Shortly thereafter, Diaz saw Campo and Velez outside the hotel. Campo introduced Velez to Diaz, and Velez smiled, shook Diaz' hand and said, "I heard a lot about you." Diaz told Velez that he was from Local 758, the hotel Union, not District 6. Diaz said that, "We have to start signing cards," and gave a

[2] The unit which was essentially the same as set forth in the collective-bargaining agreement, subsequently entered into by Respondent and District 6, was as follows:

> All full time and regular part-time porters, housekeepers, maids, bell persons and food beverage personnel; excluding guards supervisors, office clericals, managers and desk clerks.

[3] The arbitrator excluded seven cards submitted by District 6, because they were from employees not in the unit or were not employed on the date of the count. The 17 cards that the arbitrator counted were all dated between January 10 and February 12.

blank card to Velez. He asked Velez to fill it out. Velez put it in his pocket and said that he would fill it out later.

At about 3 p.m. on the same day, Diaz saw Velez standing outside. Diaz asked Velez if he had signed the card? Velez said, "no, but I will do it right now." Velez then took out the blank card from his pocket, read it, filled out all sections of the front except for the name of the employer, turned the card over, signed it, dated it, and returned the card to Diaz. Diaz asked where Campo was, and Velez replied that Campo was inside but would be coming out soon. A few minutes later, Campo came out, and he and Diaz walked along 31st Street. Diaz pulled out the card that Campo had previously given him, without a signature. Diaz said, "You forgot to sign the card this morning." Campo replied, "no problem. I'll do it right now." Diaz handed the card to Campo, who signed it, and dated it, in Diaz' presence and returned it to Diaz.

The following day, at Diaz' office, Diaz took the cards of both Velez and Campo out of his pocket. On each card, Diaz filled in portions of the card that had not been filled in by Velez and Campo. Diaz filled in the name of the Employer on the front, and on the back (the signature portion) 758 next to the printed local union No., and SEIU and 758 in the authorization paragraph. Diaz then put the cards in his file cabinet.[4]

During the first week of February, Diaz met unit employees Carrina Marrero and Tiffany Branigan at different times outside the hotel. He introduced himself to these employees as a representative from Local 758, the Hotel Union, and informed them that he was not from District 6. Branigan replied that she had heard about Diaz and Local 758. In that regard, Branigan previously had a conversation with fellow employee Domingo Castro, who had informed her that Diaz was gathering cards for Local 758, and Castro had shown her a copy of a contract that Local 758 had with another employer. Castro told Branigan that if employees signed cards for Local 758, the benefits included in the contract would be offered to the employees. However, in early February, Diaz did not give any cards to Branigan or Marrero.

However, on February 13, Diaz met Branigan and Marrero as they were going to lunch at Taco Bell. He asked if he could accompany them to lunch, and they agreed. As they were walking to lunch, and when they got to Taco Bell, Diaz explained to them some of the benefits available to employees under the Union's contract. In fact, he showed them a copy of a Master Local 758 contract, which is a "pattern agreement," that Local 758 signs with most employers. Diaz told Marrero and Branigan that if the employees signed cards for Local 758, the Union try to get these benefits for the employees, and it would be better for the employees. Both Branigan and Marrero responded that they need medical benefits because they have kids, and both agreed to sign cards.

Diaz handed them cards. Then both read the cards, filled out the entire front of the card, including name of the Employer, and signed and dated the back of the card. As was the case with the cards of Velez and Campo, on the back, of the card, the number of the Local (758) was not filled in at the time, nor was the designation "SEIU" in the authorization paragraph. Upon returning to his office, Diaz filled in these missing portions on these cards.[5]

During the first week of February, Diaz approached employee Mario Ferreira while Ferreira was cleaning the glass doors in front of the hotel. Diaz introduced himself to Ferreira in Spanish, as from Local 758, SEIU, and that he was "not from next door, District 6." Ferreira replied that he had heard about Diaz. Diaz then proceeded to tell Ferreira about signing a card for Local 758, and discussing some of the benefits of the Local 758 contract. Diaz told Ferreira that if he signed a card, he would get better benefits, and added that the employees might have to choose which Union they want. Diaz gave Ferreira a card, which Ferreira put in his pocket. Diaz instructed Ferreira to make sure management doesn't see the card, and to give it to Diaz later.

On February 13, Diaz saw Ferreira on the street coming to work. Diaz asked if he had signed his card. Ferreira replied no and added that he didn't have it on him. Diaz gave Ferreira another card and told him to fill it out. Ferreira filled out the front side of the card, including personal information as well as the name of the Employer. When Ferreira turned the card over to the other side, Diaz offered to translate this side for Ferreira if he had a problem understanding it. Ferreira said that, "I understand a little bit." Diaz replied, "no problem", and proceeded to translate into Spanish the entire of the back of the card. After Diaz completed his translation, Ferreira signed and dated the card, February 13.[6] Later, in Diaz' office, Diaz wrote the Local's number and "SEIU" in the appropriate blanks within the authorization paragraph. He then placed the card in the file cabinet.

Diaz first encountered employee Nativdad Caba in the morning of February 4, in the elevator. Diaz introduced himself as "Neil Diaz from SEIU, Local 758. I'm from the hotel Union. I'm not from next door, District 6." Caba replied, "Oh yes, I heard from William (Campo), I heard about you." The elevator then reached the 10th floor, and since the assistant manager was on that floor, Diaz did not get a chance to discuss cards or the Local 758 contract. He told her that he would see her later.

Diaz also met employee Lizette Tellez outside the hotel, during the first week of February. He introduced himself as Neal Diaz "from Local 758. I'm from the hotel Unions." Tellez said, "good", but she was in a hurry to get to work. Diaz replied that he would see her another day.

On February 14, in the afternoon, Diaz saw Tellez and Caba as they were leaving the hotel, and going to the subway to go home. He asked if he could walk with them. They replied, "no problem." As they were walking towards Fifth Avenue, Diaz explained to the employees the benefits of the Local 758 contract, including sick days, holidays, and a medical plan. Tellez

[4] The cards of Campo and Velez were both dated February 4. Velez' card for District 6 was dated January 10, and Campo's District 6 card was dated January 17.

[5] Both Local 758 cards were dated February 13. Marrero had signed a card for District 6 on January 14, and Branigan's card for District 6 was undated. However, Branigan testified that she signed her District 6 card, before she signed the Local 758 card, and that Cruz the District 6 representative never showed her a contract, as did Diaz. Therefore, she felt that Local 758 would be better for the employees.

[6] Ferreira signed a card for District 6 on February 7.

replied that she needed benefits because she has a little son, and Caba mentioned that she would like to have more sick days. Diaz pulled out two blank cards, and gave one to Tellez, and held the other in his hand. Diaz said that if they have any problem understanding the language on the card, he would be glad to translate into Spanish. Tellez declined the offer, stating that she understands English "pretty good." Caba however said that she understands "a little bit," so Diaz proceeded to translate into Spanish the back portion of the card, starting with the words "application for membership." He also translated the words 'SEIU' and "Local 758," even though these words were not filled in at the time. After Diaz completed the translation, both employees filled out the cards, signed and dated the cards February 14,[7] and returned the cards to Diaz.

In his office the next morning, Diaz filled in the Local's number and "SEIU" on both cards, and the name of the Employer on Caba's card on the appropriate blank line. He then placed the cards in the file cabinet.

Diaz first met employee Lia Restrepo in early February as she was leaving the hotel. Diaz introduced himself as Neil Diaz from "Local 758, SEIU, from the hotel Unions. I'm not from the Union next door, which is District 6. I'm the real Union for the hotels." Restrepo replied, "yes, yes, I heard about you. The girls had spoken to me about you." They briefly discussed benefits, and Restropo stated that she needed a better medical plan. However, Diaz did not give her a card at that time, because she was in a hurry to leave and didn't have time.

On February 14, after obtaining the cards from Caba and Tellez, Diaz returned to the hotel. He saw Restrepo leaving the hotel, and walking towards the train. Diaz walked with her to the train, and showed her an authorization card. He explained that the card was to show that the Union can represent her, protect her in her work, and added that the Union has good benefits. Diaz told Restropo that if she signed the card she would get better benefits than the employees currently have. Diaz translated the back portion of the card into Spanish for Restrepo then filled in the information on the front of the card, as well as the date on the back of February 14,[8] and signed the card in Diaz' presence. Diaz examined the card, and put it in his pocket. The next day, in Diaz' office he wrote in the Local's number and "SEIU" on the appropriate blanks, and placed the card in the file cabinet.

On or about February 4, Diaz spoke with a group of four employees including an engineer, and employee Shaowen Ku inside the hotel on one of the floors. He introduced himself as Neil Diaz from SEIU Local 758, a hotel Union. He added that he was not from District 6. The engineer asked if the Union was part of Hotel Trades Council. Diaz replied yes. The engineer smiled, shook Diaz' hand, and said to the other employees present, "this is the real Union." At that point, the other employees left to go back to work, and Diaz spoke with Ku. Diaz explained to Ku the benefits of Local 758's Master Contract, including holidays, sick days, full medical plan for him and his family. Ku replied that it "sounds good." Diaz took out a card and gave it to Ku. He instructed Ku to read it, fill it out, sign it, and return it to Diaz. Ku took the card and put it in his pocket.

On February 13, outside the hotel, employee William Campo gave Ku's signed card to Diaz. Diaz examined it and put it in his pocket. At his office, the next day, Diaz wrote in the Local's number and "SEIU" in the appropriate blanks in the authorization paragraph. He then placed the card in his file cabinet. Ku's card was dated February 13. Ku's District 6 card was dated February 7. I have examined the signatures that appear on the District 6 card and the Local 758 card. The signatures appear to me to be identical, and to have been signed by the same person.[9]

On March 4, Local 758 filed a petition for certification with the Region. District 6 had filed a similar petition on January 31, but this petition was withdrawn on February 7, in light of the fact that Respondent had agreed to the card count, which as noted above was conducted on February 15.

III. ANALYSIS

> When an employee has signed authorization cards for two unions, the card of neither Union will be regarded as a valid designation which can be counted toward a majority, unless the record is sufficiently probative to "clearly dissipate the ambivalence as to intent that is inherent in dual card situations, and to leave no doubt that at the time material to the determination of majority status, the dual card signer intended only one of his card cards, and which of them to evidence his designation of a bargaining agent." *Katz's Deli*, 316 NLRB 318, 329–330 (1995), enfd. 80 F.3d 775 (2d Cir. 1996), quoting *Crest Containers Corp*. 223 NLRB 739, 741 (1976).

This statement of law has been consistently applied by the Board, and supported by the ourts. *Alliant Food Service*, 335 NLRB 695 (2001); *Human Development Ass.n*, 293 NLRB 1228 (1989), enfd. 937 F.2d 657 (D.C. Cir. 1991); *Flatbush Manor Center*, 287 NLRB 457, 458, 471–472 (1987); *Caro Bags, Inc*., 285 NLRB 656, 669–670 (1987); *Windsor Place Corp.*, 276 NLRB 445, 448–449 (1985); *Unit Train Coal Sales*, 234 NLRB 1265, 1271–1272 (1978).

In applying the principles of these cases to the instant facts, Respondent recognized District 6 on the basis of its submission of 17 authorization cards, which did represent a majority of Respondent's employees in a unit of 28 employees. However, the evidence discloses that Local 758 obtained cards from nine of the employees, who also signed cards for District 6. These

[7] Both Caba and Tellez signed cards for District 6, dated February 12.

[8] Restrepo signed a card for District 6 on February 12.

[9] My findings above are based on a compilation of the credible portions of the testimony of Diaz and employees Branigan, Velez, Ferreira and Restrepo. I place no reliance on the vague, unsubstantiated, clearly hearsay testimony of District 6 representative Nephty Cruz, that he was told by many employees that they were shown a copy of a contract that Local 758 has with another hotel, and that the employees were "guaranteed" that if they sign and elect Local 758 they would be given all benefits included in the contract. However, as I have noted above, employees were shown a copy of a Local 758 contract with another employer, and were told by Diaz or other employees that they either would or might receive the benefits in that contract, if they signed a card for Local 758.

Local 758 cards were all dated subsequent to the dates that the employees signed District 6 cards, and were dated prior to the recognition of District 6 by Respondent.

Thus the dual card analysis must be made. However, it is first necessary to determine the validity of Local 758's cards, and whether General Counsel adduced sufficient evidence to authenticate these cards. In that regard, while both Respondent and District 6 made a number of objections to the receipt into evidence of these cards, it is interesting to note that in their briefs, neither party made any reference to the validity of the cards. While I do not construe such failure as a waiver of their objections to the cards, it does suggest that both parties realize that the record firmly establishes the validity of all of the Local 758 cards.

In any event, I do deem it appropriate to consider the issue, and I conclude that General Counsel has established that all of the cards were executed by employees of Respondent, and that none of the evidence cited by Respondent or District 6, establishes the invalidity of these cards.

Thus Diaz credibly testified that he solicited cards from employees Campo, Velez, Branigan, Marrero, Ferreira, Caba, Tellez, and Restrepo, and that he personally witnessed each of these employees sign his or her card on the date appearing on their card. Four of these employees, Velez, Ferreira, Branigan, and Restrepo testified and identified their signature, and testified that they signed cards on the dates appearing therein. There can be little doubt that the testimony of Diaz (the solicitor), who observed employees sign cards and who returned the cards to him, is sufficient to authenticate these cards. I so find. *McEwen Mfg. Co.*, 172 NLRB 990, 992 (1968); *Airtex Air Conditioning*, 308 NLRB 1135, 1139 (1992).

The card of Ku is more problematical, since although Diaz gave him a card, it was not returned to Diaz by Ku, but by Campo, who did not testify. However, I have compared the signatures of Ku on his District 6 card and on the Local 758 card that Diaz was given by Campo, and have concluded that the signatures were identical. I am satisfied that the same individual signed both cards, and in such circumstances the Local 758 card had been sufficiently authenticated. *Traction Wholesale Center Co.*, 328 NLRB 1058, 1059–1060 (1999); *Lott's Electric Co.*, 293 NLRB 297, 312 (1989).

I now turn to the various objections made to the validity of these cards, as expressed by Respondent and District 6 during the trial. Respondent objected to the admission of some of the cards, because Diaz could not identify the signer's handwriting. Thus contention is totally without merit, as it is not required that Diaz be able to identify the handwriting in order to authenticate the card. *Pedro's Restaurant,* 246 NLRB 567, 579 (1979). Respondent also raised chain of custody issues, asserting that the fact that Diaz placed the cards in a file cabinet, and the union president had a key to the cabinet, somehow raises the possibility of tampering and therefore invalidates the cards. I disagree. No evidence was presented that any of the cards were tampered with, and my examination of the cards in question do not suggest in any way, that such tampering has taken place. It is not essential that the General Counsel establish a chain of custody of cards, that might be necessary in a criminal case involving certain evidence. Absent any evidence of tampering, the inquiry ends when the union receives the card. *The Rowland Co., Inc.*, 210 NLRB 95, 111 (1974); *All Tronics*, 175 NLRB 644, 652 (1969). *McEwen*, supra. See also *Alexander Dawson Inc. v. NLRB*, 586 F.2d 130 (9th Cir. 1978). (Under 901(a) of the Federal Rules of Evidence, once prima facie evidence of authenticity is adduced, it is not necessary to establish chain of custody. Burden the shifts to Respondent to rebut the authenticity of documents.)

Respondent also raised the issue with respect to some of the cards, that the number Local 758, the abbreviation "SEIU", and the name of the Employer was not filled out by the employees, and these items were filled in by Diaz, after they were signed by these employees. However, it is well settled that a card which is properly authenticated is not rendered invalid simply because the signer had not filled in all of the banks when he turned it in to the Union. *McEwen Mfg.*, supra at 992; *Capital Varsity Cleaning Co.*, 163 NLRB 1057, 1060 (card of Marjorie Maynor), enfd. in pertinent part 395 F.2d 870 (6th Cir. 1968).

However, this precedent does not dispose of the issue, raised by Respondent, that when employees signed the cards, absent the name of the Local Union, and the abbreviation "S.E.I.U., they did not know what they were signing, and the cards were therefore invalid. In that regard, while it is obviously preferable practice to list the full name of the labor organization being designated on the card, before it is signed, the absence of such designation is not fatal to the validity of an authorization card, as long as the circumstances of its execution show that the signer knew the identity of the Union being designated as the bargaining representative. *World Wide Press, Inc.*, 242 NLRB 345, 365 (1979); *Cam Industries*, 251 NLRB 11 (1980); *W. C. Richards Co.*, 199 NLRB 1069, 1077 (1972); *Southbridge Sheet Metal Works, Inc.*, 158 NLRB 819, 827 (1966), enfd. 380 F.2d 851 (1st Cir. 1967).

Here the circumstances reveal that the authorization cards contained the name of the parent organization, Service Employees International Union in Capital letters. Thus the failure to include the abbreviation "S.E.I.U.," before the card was signed, has no significance. The failure to include Local 758 is more troublesome, but the solicitation of the cards makes it clear that the employees knew that they were designating Local 758 when they signed their cards. Thus, Diaz made it clear when he solicited all of the cards that he was from Local 758, and not District 6. Indeed the four employees who testified, Branigan, Velez, Ferreira, and Restrepo all confirmed that they knew when they signed their cards that Diaz was from Local 758, and that their cards were for Local 758. Therefore, I conclude that the employees were not mislead by the absence of the Local Union's number on the card, when they signed the cards, and that the cards were valid. *World Wid*, supra; *Cam Industries*, supra; *W .C. Richards*, supra; *Southbridge Sheet*, supra.

Finally, both Respondent and District 6 asserted at the trial, that the cards should be invalidated because Diaz promised employees that they would receive benefits, as under Local 758's contract with other employers, if they signed their cards. It is argued that this constitutes an unlawful promise of benefits sufficient to invalidate the cards. I do not agree. The evidence did establish that Diaz in the course of his solicitation of cards,

did discuss Local 758's contract with other employers, showed this contract to some employees, and informed some employees that they might or in some cases would obtain these benefits, if they signed cards for Local 758. However, such statements by Diaz were not a promise of benefit to be granted by the Union but merely an explanation of what benefits Diaz believed would occur if the Union were successful in the election and a contract was signed with Respondent. The Union was merely engaging in commonplace election propaganda and the cards solicited by Diaz are not invalidated by such comments. *Windsor Industries*, 265 NLRB 1009, 1020 (1982); *Federal Alarm, 230 NLRB* 518, 521 (1977); *Diamond Motors Inc.*, 212 NLRB 820, 830 (1974); *Jimmy Richard Co.* 216 NLRB 802, 807 (1974); *Essex Wire Corp*., 188 NLRB 397, 416–417 (1971).

The underlying basis for these cases is that the Union has no power to grant wage increases or other benefits, unlike the employer, so that when a union promises that employees will obtain increased benefits if they signed for or support the union, employees understand that such benefits can be expected only after a contract is signed. Indeed the court's have long recognized that while it may be unlawful for an employer to promise employees increased benefits if they reject the union, it is not unlawful or objectionable for a union to promise employees increases in benefits to support the union, in recognition of the fact that the employer has control over such matters, but not the union. *NLRB v. Kinter Bros.*, 419 F.2d 329, 335 (D.C. Cir. 1969) (Union advised employee that Union would obtain higher wages and better working hours. Cards held valid); *NLRB v. Golden Age Beverage Co.*; 715 F.2d 26, 28 (5th Cir. 1969) (Union's promises of benefit did not interfere with election) *NLRB v. Gilmore Industries*, 341 F.2d, 240, 242 (6th Cir. 1965). (It is not unlawful for a union to promise to obtain a wage increase or other benefits if it is elected.) *Olson Rug Co. v. NLRB*, 260 F.2d. 255, 256 (7th Cir. 1958). (Promise of benefit by union not objectionable, since benefit was not within the power of union to confer upon the employees).

These cases must be contrasted with cases such as *NLRB v. Savair Mfg*., 414 U.S. 270 (1973) (Union's waiver of initiation fee for card signers unlawful), and *Wagner Electric Co*., 167 NLRB 532, 533 (1967) (Union's promises to employees of life insurance upon signing cards, objectionable, where the promises involve a benefit that the union was in a position to confer upon card signers.)

Accordingly, I find that the statements made by Diaz about benefits that employees would or could receive if they signed cards, do not invalidate the Local 758 cards that they signed. I therefore find that all nine cards submitted were valid designations for Local 758 to represent the employees.

The next question to be answered is the effect of these cards on the prior cards that these employees signed for District 6. As the above cited precedent discloses, the issue is whether the record establishes that ambivalence in intent that is inherent in dual card situations has been dissipated by evidence that leaves no doubt that the dual card signers intended only his other District 6 card to evidence his or her designation of a bargaining agent. *Katz's Deli*, supra; *Crest Container*, supra; and *Alliant Food Service*, supra.

It is clear that under no conceivable interpretation of the facts here, can such a finding be made. Indeed, if anything the evidence could conceivably establish that the employees by signing their Local 758 cards intended to clearly repudiate their District 6 membership, and to support Local 758 as their bargaining representative. *Wave Crest Home for Adults*, 211 NLRB 217, 230 (1975); *Alliant Food Service*, supra at 2, see also *Harry Stein*, 43 NLRB 124, 131 (1942) (Employee who signed duplicate cards, testified she preferred nion whose card she signed last, because it was a "sample card Union.") Cf. *Caro Bag*, supra; and *Windsor Place*, supra, where dual cards signed by recognized Union, held invalid even though these cards were signed after they signed cards for different Union.

However, I need not and do not decide, whether Local 758's cards would be deemed a sufficient repudiation of their District 6 cards, to warrant a finding that the Local 758 cards could form the basis for lawful voluntary recognition of Local 758. I need only find, which I do that the Local 758 cards created sufficient ambivalence about the District 6 cards signed by these employees, that their District 6 cards cannot be counted in establishing District 6's majority status at the time of recognition.

Neither Respondent nor District 6 quarrel with this factual finding. Instead they find fault with current law, and argue consistent with the dissenting opinion of Judge Harry Edwards in *Human Development v. NLRB*, supra, 937 F.2d at 670–675, that the Board should overrule its longstanding precedent with respect to dual cards, in light of its decision in *Bruckner Nursing Home*, 262 NLRB 955 (1982). Since I as an administrative law judge, am bound to apply existing Board precedent, I need not go any further in my analysis, and could simply relegate Respondent and District 6 to make their appeal to the Board to change the law. However, I nevertheless deem it appropriate to express my views on the subject, and I shall do so.

I am of the opinion that current Board law on dual cards is not inconsistent with or overruled by *Bruckner*, as asserted by Respondent, District 6, and Judge Edwards, and should not be changed. The essence of the argument made by Respondent as well as by District 6 and Judge Edwards, is that since *Bruckner* has overruled *Midwest Piping & Supply*, 63 NLRB 1060 (1945), and found an employer does not violate the Act by recognizing a majority Union in a dual organizational situation, unless a valid petition has been filed at the time of recognition, the dual card doctrine. "no longer makes sense", *Human Development*, supra at 673. Indeed it is noted by both Judge Edwards and Respondent that the Board in Bruckner made specific reference to dual cards, as follows

> [O]ur new approach provides a satisfactory answer to problems created by execution of dual authorization cards. It is our experience that employees confronted by solicitations from rival unions will frequently sign authorization cards for more than one union. Dual cards reflect the competing organizational campaigns. They may indicate shifting employee sentiments or employee desire to be represented by either of two rival unions. In this situation, authorization cards are less reliable as indications of employee preference. When a petition supported by a 30-percent showing of interest has been

> filed by one union, the reliability of a rival's expression of a card majority is sufficiently doubtful to require resolution of the competing claims through the Board's election process. The phenomenon of dual cards in a rival union organizational setting must be taken into account, but can no longer solely justify our absolute refusal to rely on cards in *Midwest Piping* situations, particularly since we regard them as a reliable means of ascertaining the wishes of a majority of employees in other organizational contexts. 262 NLRB at 958.

Also, Judge Edwards and Respondent argue that the Board in a number of cases subsequent to *Bruckner*, have appeared to back away from, if not abandon the dual card doctrine.[10]

However, in my view all of these contentions are adequately and persuasively disposed of by the majority opinion in *Human Development,* supra. As the opinion points out, both before and after *Bruckner*, the Board has "clearly distinguished between a challenge based on dual cards, to an employer recognized Union's majority support, and a challenge to an employer's strict neutrality under *Midwest Piping.*" 937 F.2d at 666. Thus as *Crest Container,* supra, and *Flatbush Manor,* supra, makes clear, the theories underlying violations in *Midwest Piping* and now *Bruckner*, and violations based on lack of majority status are distinctly different. Under a *Bruckner* theory, "lack of majority status is not a necessary element of proof of a violation, and proof that the recognized union possesses majority support is not a defense to the alleged violation." *Film Constortium,* supra at fn. 4. Recognition of a union that does not have majority status is a separate theory of a violation, and this is where the dual card doctrine becomes relevant. The existence of dual cards becomes relevant in assessing majority status, and where, as here, the dual cards preclude a finding that the District 6's cards represent the unambiguous choice of that employee of District 6 as its representative, the card cannot be counted toward establishing District 6's majority status.

To be sure, there can be some overlap in these theories, in that evidence tending to show the existence of a real question concerning representation and the existence of dual cards can be similar. Indeed in some cases violations are found based on both theories. *Yankee Department Stores*, 211 NLRB 306, 309 (1974) (violation based on both *Midwest Piping* and lack of majority, due to dual cards). Nonetheless, the theories are distinct, and evolve from different considerations. The *Midwest Piping/Bruckner* theories evolve from the Board's desire to have real questions concerning representation, decided by Board elections, rather than voluntary recognition in rival organization campaigns, whether or not majority status is present. The dual card theory is simply a recognition of longstanding precedent that a union must be designated by a majority, in order to obtain lawful recognition, and that where employees sign dual cards, the cards, "do not reliably reflect the employees' choice of bargaining agent and cannot properly be counted to support the claim of majority status." *Yankee Department,* supra at 309.

[10] *Great Southern Construction, Inc.*, 266 NLRB 364, 365 (1983); *Film Constortium*, 268 NLRB 436 (1983); *Rollins Transportation*, 296 NLRB 793 (1989).

While *Bruckner,* supra, does make reference to dual cards, as pointed out by Respondent and Judge Edwards, a careful reading of the context of the reference, makes clear that the Board did not intend to change existing law with respect to dual cards. Thus *Bruckner* was issued to reevaluate *Midwest Piping*, in light of the many court of appeals decisions, which disagreed with the Board's *Midwest Piping* analysis,[11] and concluded that where a union represents a majority of employees, an employer does not violate the law by recognition of that union, and no question concerning representation thereby existed. The Board in *Bruckner* attempted to avoid the difficult issues of deciding whether a "real question concerning representation" exists, by returning to the bright line rule of requiring the filing of a petition to preclude recognition.[12] Thus, the discussion of dual cards in *Bruckner* supra, related to the Board's assessment of dual cards or any cards for that matter, in a "*Midwest Piping*" situation. Thus, the Board observed that the phenomenon of dual cards must be taken into account, "but can no longer justify our absolute refusal to rely on cards in *Midwest Piping* situations." Therefore, the Board concludes that in finding the proper balance between statutory purposes, it will require a properly filed petition by one of the competing labor organizations in order to preclude recognition, under a *Midwest Piping* theory. It is significant to note that the Board does recognize the validity of dual cards as valid for showing-of-interest purposes, since it reasons that employees could desire to join more than one union, and "the election will determine which labor organization, if any, the employees wish to represent them for the purposes of collective bargaining." *Brooklyn Borough Gas*, 110 NLRB 18, 20 (1954).

However that is not the case, where as here, the dual card is used to establish majority status, and to preclude the employees from choosing their representative by the preferred Board conducted election. It is clear that Buckner did not intend to change the law with respect to the reliability of dual cards to establish majority status. Thus in footnote 13 of *Bruckner,* as pointed out by the majority in *Human Development*, supra, the Board stated

> Although an employer will no longer automatically violate Sec. 8(a)(2) by recognizing one of several rival unions before an election petition has been filed, we emphasize that an employer will still be found liable under Sec. 8(a)(2) for recognizing a labor organization which does not actually have majority employee support. *International Ladies' Garment Workers' Union, AFL–CIO [Bernhard-Altman Texas Corporation] v. NLRB* 366 U.S. 731 (1961). This longstanding principle applies in either a single or rival Union organiza-

[11] *Plyskool v. NLRB*, 477 F.2d 66 (7th Cir. 1973); *NLRB v. Peter Paul, Inc*. 467 F.2d 700 (9th Cir. (1972); *American Bread Co. v. NLRB*, 411 F.2d 147 (6th Cir. 1969).

[12] I note that this is actually a return to *Midwest Piping* itself, which had required a filing of a petition to establish the existence of a real question concerning representation, but that position was subsequently changed by removing that requirement, and assessing each case on its own facts to determine if the other union presented a "colorable claim," a claim that was "not naked" or a claim that was "not unsupportable." *Bruckner,* supra at 956.

> tional context and is unaffected by the revised Midwest Piping doctrine announced in this case. For instance, if an occasion arises where an employer is faced with recognition demands by two Unions, both of which claim to posses valid authorization card majority support, the employer must beware the risk of violating Sec. 8(a)(2) by recognizing either Union even though no petition has been filed. In such a situation, there is a possibility that the claimed majority support of the recognized Union could in fact be nonexistent. Consequently, the safe course would be simply to refuse recognition, as clearly authorized under *Linden Lumber Division, Summer & Co. v. NLR.B*, 419 U.S. 301 (1974). Either of the Unions or the employer could then file a representation position. 262 NLRB at 957.

This footnote demonstrates, confirmed by subsequent Board cases such as *Flatbush Manor*, supra, that majority status is clearly distinct from *Midwest Piping* issues, and that dual cards generally cannot be used to reliably establish that the employee has chosen either labor organization as its representative. Therefore, where an employer, as Respondent did here, recognizes a union based on an alleged majority, which cannot be found absent the dual cards, the recognition is unlawful, even though the employer is unaware of the existence of the dual cards. Therefore the arguments asserted by Respondent and District 6, that the Employer should not have to "guess" whether a QCR exists is answered. *Bruckner* gives the employer a bright line rule to follow with respect to the existence of a question concerning representation, but does not disturb longstanding precedent that the union must still represent a majority of employees, and that an employer's lack of knowledge of a union's nonmajority status is no defense to an Sec. 8(a)(2) violation. Indeed, there are numerous situations where employers might be unaware of a union's lack of majority, even where as here, a card count is conducted. The cards could be coerced, induced by an unlawful promise of a waiver of initiation fee, by statements that the card is to be used only for an election, solicited by supervisors, or in the most closely related situation, where the cards have been revoked by the signer prior to the recognition. *TMT Trailer Ferry, Inc.*, 152 NLRB 1495, 1496 (1965); *Martin Theatres*, 126 NLRB 1057, 1058–1059 (1960). In each of these situations, the employer might not know that the cards that it relied upon were invalid for the above reasons, including the subsequent revocation by the signer, but it is not exonerated from its conduct in recognizing a minority union, regardless of its knowledge of that fact. *Bernard Altman*, supra. "When an employer recognizes a Union without the confirmation of a representation election, it assumes the risk of mistaking the extent of the Union's support, and of committing the unfair labor practices associated with recognition of a minority Union." *Human Development*, supra, 937 F.2d at 665.

In my view dual cards are simply another way of invalidating a card as a reliable indication of Union support, most akin to a subsequent revocation by the card signer.

As related above, I disagree with Respondent that cases subsequent to *Bruckner*, suggest that the dual card doctrine is no longer the law. In *Great Southern Construction, Inc.*, 266 NLRB 364, 365 (1983), the Board dismissed a complaint which had been litigated under a *Midwest Piping* theory, based on its recently issued *Bruckner* decision. It is true as Respondent notes, that the evidence therein revealed that a majority of employees had signed cards for the charging party union, which suggests that dual cards would have negated the majority of the recognized union. However, the Board specifically stated that it was not analyzing the case in the "context of dual authorization cards," since the cards of neither union were introduced into evidence, and the case was litigated solely under a *Midwest Piping* theory. Therefore, this case cannot be construed as an abandment or even a retreat from prior dual card precedent. Indeed if the Board wished to conclude that *Bruckner* overruled *Crest Container* and its progeny, it could have done so, but it carefully declined to take such a position.

Similarly, in *Film Consortium*, 268 NLRB 436, 437 (1983), another case litigated under a *Midwest Piping* theory, the Board again dismissed the complaint, under *Bruckner*, since no petition was filed at the time of the recognition. Respondent cites this case as authority for the Board not considering the dual card doctrine. I disagree. Although the case did reveal evidence of a dual organization campaign, dual card issues were neither litigated, nor discussed. To the contrary, the Board dismissed the contention of General Counsel and Charging Party that under *Bruckner*, Respondent is not relieved of liability, since the evidence did not prove that the recognized Union represented a majority. The Board made clear the difference between a *Midwest Piping* theory and lack of majority status, and noted that in the latter case, it is the General Counsel's burden to establish lack of majority status. Thus since majority status was not litigated, the complaint must be dismissed. Therefore, this case not only does not support Respondent's assertion that *Bruckner* changes dual card precedent, but in fact supports a contrary conclusion. It make the distinction between majority status and *Midwest Piping-Bruckner* violations, which are not dependent on majority status.

Respondent also relies on *Rollins Transportation*, 296 NLRB 743 1989), as modified by *Smith Food & Drug Centers*, 320 NLRB 844 (1996), in support of its assertion that *Bruckner* has changed Board law with respect to dual cards. Once more, I cannot agree. *Rollins* was a representation case, dealing with the issue of representation bar in the context of a rival organizational campaign. The only reference to dual cards in the decision, was the Board's statement that the evidence suggested that dual cards existed, and it implies "that at the time of recognition some employees were uncertain which union they actually supported." Thus this language, if anything reinforces the Board's view of dual cards. The Board found no recognition bar, in view of the simultaneous organizational campaigns, despite the fact that the employer was not aware of both campaigns. However, Respondent relies on footnote 5 which states as follows

> Nothing in our holding that no recognition bar exists in the conduct of an election should be construed to cast doubt on the legitimacy of the Employer's granting recognition to the Intervenor. Likewise this holding should not lead employers in other factually similar situations to be reluctant, for fear of

> violating the Act, to grant recognition to union's that have demonstrated majority support. Indeed, we agree with our dissenting colleague that the grant of recognition here would be lawful under *Bruckner* because the intervenor was recognized before the Employer had knowledge is a critical element for determining the lawfulness of an employer's granting recognition in the rival union, initial organizing unfair labor practices setting. Id at 795.

Thus Respondent argues that this footnote establishes that under *Bruckner*, in an unfair labor practice setting, knowledge of rival organizing is the crucial factor, and that therefore the dual card doctrine as obsolete. However, Respondent misses the point that *Bruckner* decides whether an unfair practice has been committed, based on a theory of whether a question concerning representation exists. As related above, and made clear by the Board in *Flatbush Manor*, supra; and *Film Consortium*, supra, this is a different theory than lack of majority status. Indeed *Rollins* itself mentions in the footnote, cited by Respondent, that in order to have lawful recognition, the Union must have demonstrated majority support." 296 NLRB at 795. Dual cards, as I have detailed above, is simply one of the ways that assesses the validity of the dual card as a reliable designation of either of the unions as the unambiguous representative of the signer for majority purposes.

Smith's Food, supra, modified *Rollins*, and attempted to harmonize *Bruckner* to recognition bar law. Thus, it applied a modified analysis of *Bruckner* to recognition bar cases, and held that in rival organizing situations, a voluntary recognition of a Union by the "employer based on an unassisted uncoerced showing of interest from a majority of unit employees will bar a petition from a competing Union, unless the petitioner demonstrates a 30-percent showing of interest that predates the recognition."

The Respondent cites the portion of the opinion in *Smith Foods* that emphasizes that the Board has "an obligation to provide clear guidance wherever possibe so that parties can understand the legal requirements imposed on them and reasonably predict the consequences of their actions." Id. at 846. Therefore Respondent argues that the dual card doctrine is inconsistent with this requirement, and requires employers to "guess whether they may lawfully recognize a Union supported by a majority of their employees, or whether they risk committing an unfair labor practice by doing so." Id. Once more, Respondent has confused the *Bruckner* theory of a violation which does require employer knowledge, and concludes that such knowledge is supplied when a petition is filed with a violation based on lack of majority status. Indeed, the very quote cited by Respondent, which discusses employer knowledge, also states that the Union must be supported by a majority of employees, in order for recognition to be valid. Therefore, the dual card doctrine, which is utilized in calculating majority status is still valid and consistent with *Bruckner*. While as I have observed above, it may be true that an employer may not know about the dual cards, but "when an employer recognizes a Union without the confirmation of a representation election, it assumes the risk of mistaking the extent of the Union's support, and of committing the unfair labor practices associated with the recognition of a minority Union." *Human Development*, supra at 665 citing *Bernhard Altman*, supra at 738–739.

Accordingly, based on the foregoing analysis, I agree with the majority Court opinion in *Human Development*, supra that the dual card doctrine is neither impacted nor changed by *Bruckner* and is still valid precedent. Cases subsequent to *Human Development* only serve to confirm this view. *Katz's Deli*, supra, *Alliant Food Service*, supra.[13]

Therefore, I conclude that Respondent has violated Sections 8(a)(1) (2) and (3) of the Act, by recognizing *District* 6 and signing a contract with District 6 containing a union security clause, at a time when District 6 did not represent a majority of its employees. *Alliant Food Service*, supra; *Katz's Deli*, 316 NLRB 318; *Human Development*, supra; *Flatbush Manor*, supra; *Crest Containers*, supra.

CONCLUSIONS OF LAW

1. The Respondent, Le Marquis Hotel, LLC, is an Employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 758 Hotel & Allied Services Union, SEIU, AFL–CIO and District 6 International Union of Industrial, Service Transport and Health Employees, are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1), (2), and (3) of the Act by recognizing and signing a contract with District 6, containing a union security clause.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has violated Section 8(a)(1), (2), and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent cease and desist from giving effect to or enforcing its contract with District 6, but with the proviso that the Order shall not require the withdrawal or elimination of any benefit of any wage increase or other benefit under the contract. *Alliant Food Service*, supra at 3.

I also agree with General Counsel, that although the parties stipulated that no dues were deducted pursuant to the Union Security Clause, the stipulation did not include initiation fees or other assessments. Therefore, the record is silent as to whether any fees were exacted pursuant to the contract. In view of the

[13] Respondent also relies on Member Liebman's dissenting opinion in *Alliant Food Services*, supra, which seeks to overrule the dual card doctrine, because in her view, a dual card can be construed as a valid card for either union, since it infers that the signer desires union representation and would be prepared to accept either union. However, this dissenting opinion is of no help to Respondent. Aside from the fact that is a dissenting opinion only, and is not based on *Bruckner* as Respondent argues, it is any event inapplicable to the instant case. Member Liebman concedes that her theory would not apply where the second card, specifically revokes any prior cards. Id. at 5. Here the Local 758 cards signed by dual card signers does state that the card "supersedes and cancels any power and authority heretofore given to any person or labor organization to represent me."

above, it is appropriate to order reimbursement for such fees, if exacted.[14]

In that connection however, reimbursement is appropriate only for employees who paid such fees, and who did not join District 6 voluntarily before the contract became effective. *Alliant Food Service*, supra at p.3; *Human Development Assn.*, 293 NLRB at 1229; *Katz's Deli*, supra. While I have found that the dual card signers who signed for Local 758, invalidated their District 6 cards for the purposes of determining majority support, such action does not vitiate the voluntary nature of their signing District 6 cards. *Katz's Deli*, supra at 1229. Therefore, the dual card signers would not be eligible for any reimbursement of initiation fees. Interest on any refunded initiation or other fees shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Based on these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[15]

ORDER

The Respondent, Le Marquis Hotel, LLC, New York, New York, its officers agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing or dealing with District 6, International Union of Industrial Service Transport and Health Employees, as the exclusive bargaining representative of its employees at a time when that labor organization does not represent a majority of such employees in an appropriate bargaining unit.

(b) Giving effect to or enforcing the collective-bargaining agreement executed with District 6 or to any extension, renewal, or modification of it; provided, however, that nothing in this Order shall require the withdrawal or elimination of any wage increase or other benefits or terms and conditions of employment that may have been established pursuant to the performance of the contract.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from District 6 as the collective-bargaining representative of its employees unless and until District 6 has been certified by the National Labor Relations Board as the exclusive representative of such employees.

(b) Reimburse its employees for any money required to be paid pursuant to the collective-bargaining agreement between Respondent and District 6 , including money paid for initiation fees, or other obligations of membership in District 6 plus interest.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amounts owed to employees under the terms of this Order.

(d) Within 14 days after service by the Region, post at its New York, New York facility copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 15, 2002.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 22, 2003

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT recognize or deal with District 6 International Union of Industrial Services Transport and Health Employees, as the exclusive collective-bargaining representative of our employees at a time when it is not the representative of a majority of such employees in an appropriate bargaining unit.

[14] Of course if at the compliance stage, the evidence discloses that no initiation or other fees were exacted, no reimbursement will be necessary.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT give effect to or enforce our collective-bargaining agreement with District 6 or to any extension, renewal, modification of it; provided, however, that nothing in the Board's Order requires the withdrawal or elimination of any wage increase or other benefits or terms and conditions of employment that may have been established pursuant to the performance of the contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from District 6 as the collective-bargaining representative of our employees unless and until it has been certified by the National Labor Relations Board as the exclusive representative of such employees.

WE WILL reimburse our employees for any money required to be paid pursuant to our collective-bargaining agreement with District 6, including money paid for initiation fees, or other obligations of membership in District 6 plus interest.

LE MARQUIS HOTEL, LLC